

REMARKS

A. Status of the Application

Claims **1-18, 20-23, 26-71, 75 and 80-85** have been rejected under 35 U.S.C. 102(e), and claims **19, 24, 25, 72-74, and 76-79** have been rejected under 35 U.S.C. 103(a).

Claims **25, 53, 76 and 82** have been amended. Claims **1-95** are pending, and claims **1, 56, 60, 64, 69, 71, 75, 76, 78, 80-82 and 92-95** are the only independent claims (a total of 16 independent claims).

Claims **25, 53 and 76** have been amended to correct clerical errors, and consequently the changes to these claims are cosmetic. In particular, claim **25** has been amended to insert “a” preceding “second” in line 3, claim **53** has been amended to remove the word “further” in line 1, and claim **76** has been amended to insert “of” following the word “indication” in line 5. Claim **82** has been amended as explained in detail below. No new matter has been added.

B. Section 102(e) Rejections

Claims **1-18, 20-23, 26-71, 75 and 80-95** have been rejected for allegedly being anticipated by Chen et al., U.S. Patent No. 6,741,969 B1 (hereinafter “Chen”). Applicants respectfully traverse this rejection.

Pending claim **1** is directed to a method for adjusting a price of at least one of a plurality of products, and recites:

providing an indication of a plurality of products, each of said plurality of products having an initial price;
providing an indication of an available price adjustment;
providing an indication of a subsidy offer associated with said price adjustment, said subsidy offer including at least one qualifying action; and
determining a second price for at least one of said plurality of products. (Emphasis added)

Claim 1 provides a customer with an indication of an available price adjustment and of a subsidy offer associated with it, wherein the subsidy offer includes at least one qualifying action. As disclosed in the application, a third party may subsidize any losses incurred by the merchant due to the price adjustment, and the term “qualifying action” includes many different types of

activity that may place an additional burden on a customer wishing to obtain the benefit of the subsidy. Some examples of qualifying actions include test driving a vehicle at an automobile dealer by a certain date, shopping at a particular store, using a particular vending machine, using a specific credit card during a purchase, switching long distance telephone service providers, accepting a magazine subscription, and/or some combination of activities (See, for example, the application at page 18, lines 18-24, and at page 6, line 22 to page 7, line 3). Such embodiments are advantageous to a merchant because the merchant can now allow different customers to obtain different prices for the same products (because a particular price for a product may depend on the subsidy and / or qualifying action), thereby allowing the customers to make purchasing decisions based on their own price sensitivity. Furthermore, the merchant may also receive a benefit from the completion of a qualifying action by a customer (Page 9, lines 17-26). A third party subsidizer benefits by gaining access to the merchant's customers and thus obtaining additional marketing opportunities (Page 10, lines 2-6). Lastly, customers benefit because they can now obtain products and / or items at reduced prices by completing or otherwise satisfying a qualifying action (Page 10, lines 7-14).

In stark contrast, Chen discloses a system and method for reducing excess capacity for restaurants and other industries during off-peak hours, and features an auction system that enables customers to bid for gift certificates that are redeemable at such businesses during a predetermined time (See Chen, Abstract, col. 1, lines 43-51, and col. 8, lines 19-31). Another aspect of Chen's system concerns permitting a user to enter an "incentive request" that may be processed by or for a restaurant to determine if a dining incentive should be issued to the customer. For example, a customer may select a restaurant and enter various dining parameters (such as time of dining, number of persons, and an offer price), and then the selected restaurant may determine whether or not to accept the incentive request (Chen, col. 6, lines 36-50). In another aspect, if an incentive is accepted, it may be issued to the customer without a paper certificate, for example, by storing the incentive information electronically with a payment processing system associated with the restaurant. In this case, a customer may provide payment information to receive the incentive, and when that payment information is input at the restaurant (i.e., a restaurant employee scans the customer's credit card to obtain payment for a meal that was served), then the incentive can be retrieved and automatically deducted from the amount to be charged to that credit card number (Chen, col. 6, line 61, to col. 7, line 9).

We respectfully submit that Chen fails to teach or even suggest to *provide an indication of a subsidy offer associated with a price adjustment, the subsidy offer including at least one qualifying action* as required in pending claim 1. The Examiner asserts that “paying for a meal” in Chen teaches a “qualifying action” of a subsidy offer. Applicants respectfully disagree. Paying for a discounted meal is mere acceptance of an offer for the discounted meal. As explained above, a “qualifying action” may include many different types of activities that are unrelated to payment for the product, such as test-driving a vehicle at an automobile dealer, switching long distance telephone service providers, and / or accepting a magazine subscription. The “qualifying action” therefore is an extra action and / or requirement beyond mere payment for a transaction. Chen does not contemplate such operation, and thus fails to teach or suggest such a feature. Thus, claim 1 is not anticipated. Accordingly, since each of claims 2-55 either directly or indirectly depends on claim 1, these claims are also not anticipated.

Independent method claims 56 and 60 also include the feature of providing an indication of a subsidy offer that includes at least one qualifying action. Consequently, claims 56 and 60 are not anticipated by Chen for at least the same reasons explained above with regard to claim 1. Accordingly, claims 57-59 and 61-64, which directly or indirectly depend on either of claims 56 and 60 also are not anticipated.

Independent claim 65 includes *providing an indication of an initial price for each of a plurality of items and a corresponding price adjustment for each of the plurality of items*, and *providing an indication of at least one qualifying action associated with at least one of the plurality of items*. Independent claim 69 similarly includes *providing an indication of a list of items, wherein said list includes a plurality of items available from a restaurant, each of the plurality of items having an associated initial price and an associated price adjustment available upon completion of a qualifying action*, and also provides for *receiving an indication of a commitment to complete said qualifying action*. We respectfully submit that these features of claims 65 and 69 are not taught or suggested by Chen. In particular, Chen does not disclose to provide a list of items and a corresponding price adjustment for each item, instead describing an auction system that enables customers to bid for gift certificates, or a system that permits customers to provide “incentive requests” that may be accepted or denied by a restaurant. Furthermore, Chen does not disclose providing an indication of at least one qualifying action associated with the plurality of items as required by claim 65, and does not disclose to receive an indication of a commitment to complete a qualifying action as

required by claim **69**. Consequently, claims **65** and **69** are not anticipated, and neither are dependent claims **66-68** and **70** for at least the same reasons.

Independent claim **71** includes the feature of *providing an indication of a plurality of qualifying actions associated with a plurality of items, each of the qualifying actions having an associated price adjustment* which feature is not taught or suggested by Chen. Thus, claim **71** is not anticipated, and neither are dependent claims **72-74** for at least the same reason.

Independent claim **75** includes *providing an indication of a menu, wherein the indication includes an item available from a restaurant, the item having an associated initial price and an associated price adjustment available upon completion of a qualifying action, and receiving an indication of a commitment to complete the qualifying action*. Once again, we submit that Chen does not contemplate such operation and thus fails to teach or even suggest such a process. Thus, claim **75** is not anticipated.

Independent claim **80** includes *receiving an indication of a subsidy offer associated with a price adjustment, the subsidy offer including at least one qualifying action*. Similarly, independent claim **81** includes *receiving an indication of a list... each of the plurality of items (of the list) having an associated initial price and an associated price adjustment available upon completion of a qualifying action*. Furthermore, claim **81** includes *providing an indication of a commitment to complete said qualifying action*. We respectfully assert that Chen fails to teach or suggest any of these features, for the same reasons already explained above with regard to claims **1** and **75**. Consequently, claims **80** and **81** are not anticipated.

Independent claim **82** has also been rejected for allegedly being anticipated by Chen because the phrase “allowing a third party” recited in the preamble was not accorded any patentable weight. Consequently, the body of claim **82** has been amended to more distinctly claim the invention, and now recites: *providing an indication of a commitment by at least one third party to subsidize a price reduction for at least one item available from a merchant, said commitment having an associated qualifying action*. Support for this amendment can be found, for example, on page 9, line 27 to page 10, line 6 of the application. No new matter has been added. We respectfully submit that Chen fails to teach or even suggest having a third party subsidize a price reduction. Thus, claim **82** is not anticipated. Moreover, dependent claims **83-91** are not anticipated for at least the same reason.

Independent apparatus claim **92** relates to system that includes a memory, a communication port, and a processor, wherein the processor is operative to perform the method of claim **1**. Similarly, independent claim **93** pertains to a computer readable medium storing a computer program that includes computer readable means for performing the process recited by claim **1**, and independent claim **94** recites an article of manufacture that includes a computer readable program means that is operable to perform the process of claim **1**. Accordingly, it is respectfully submitted that claims **92-94** are not anticipated because Chen fails to teach or suggest at least one recited feature in each of these claims, for the same reasons explained above with regard to claim **1**.

Independent apparatus claim **95** recites means for sending indications of a plurality of products, of a price adjustment, and *of a subsidy offer associated with the price adjustment, wherein the subsidy offer includes at least one qualifying action*. Consequently, claim **95** is not anticipated for the same reasons explained above with respect to claim **1**.

In view of the above amendments and remarks, the applicants respectfully request withdrawal of the 35 U.S.C. 102(e) rejections of claims **1-18, 20-23, 26-71, 75 and 80-95**.

C. Section 103(a) Rejection

Claims **19, 24, 25, 72-74 and 76-79** stand rejected for allegedly being obvious in view of Chen. We do not agree with this rejection.

On page 3, paragraph 8, of the Office Action, the Examiner recognizes that Chen does not teach verification. However, in order to justify this rejection, the Action includes the following conclusory statement:

“... Because it is common and easy to return to a website to check information, which reads on verification, it would have been obvious... to add price verification to the teachings of Chen et al.”. (See Office Action, page 3).

This bald statement lacks support, and we therefore submit that there are no clear and particular findings supported by actual and substantial evidence of record that could support the obviousness rejection. Accordingly, no prima facie case of obviousness has been made for these claims for at least this reason. By failing to indicate any evidence of record in support of this convenient assessment that such a feature was known in the prior art (and the failure to indicate any evidence of a

motivation to provide for any such features), the Examiner has failed to establish a prima facie case of obviousness of any of claims **19, 24, 25, 72-74 and 76-79**.

Furthermore, we submit that the Examiner's analysis is flawed. In particular, independent claim **76** includes the steps of *requesting a verification of the second price; and receiving an indication of a verification of said second price*. Accordingly, the method requires requesting verification, and in response, receiving an indication of a verification of the second price. Navigating away from a website is different from entering a request for verification, and returning to a website that one left does not necessarily provide for receiving verification of anything. Thus, we assert that claim **76** is patentably distinct from Chen, and that dependent claims **77-79** should also be allowable.

We respectfully submit that dependent claims **19, 24, 25 and 72-74** should also be allowable over Chen. These claims directly or indirectly depend on at least one of independent claims **1 and 71**, which are patentably distinct from Chen for the reasons explained above. Consequently, claims **19, 24, 25 and 72-74** should be allowable for at least the same reasons.

In view of the above remarks, we respectfully request withdrawal of the 35 U.S.C. 103(a) rejection.

D. Conclusion

It is submitted that all of the claims are in condition for allowance. The Examiner's early re-examination and reconsideration are respectfully requested.

If the Examiner has any questions regarding this Amendment or the present application, the Examiner is cordially requested to contact Stephan Filipek at telephone number (203) 461-7252 or via electronic mail at sfilipek@walkerdigital.com.

E. Petition for Extension of Time to Respond

Applicants herein petition for a three-month extension of time to respond, and have authorized the Commissioner to charge Deposit Account No. 50-0271 for the surcharge fee.

We do not believe that any other fees are due, but if a fee should be necessary to continue prosecution of the present application, please also charge any such required fee to our Deposit Account No. 50-0271. In addition, please credit any overpayment to Deposit Account No. 50-0271.

Respectfully submitted,

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